

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1537 OF 2006

Shri.Brijdeo Ram ..Applicant

V/s.

Shri.Kannan Kutti and anr. ..Respondents

Mr.Pravin Patel for the applicant
Mr.Y.S.Shinde, APP for the State of Maharashtra

CORAM : J.H.BHATIA, J.

DATE : 20TH APRIL, 2007

P.C.

1. Heard Mr.Pravin Patel, learned counsel for the applicant. Perused the impugned Judgment.

2. By this application, the applicant-original complainant seeks to prefer an appeal against acquittal of the respondent No.1-accused for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881. In para 13 and 14 of the impugned Judgment, the learned Magistrate has pointed out that eventhough it is case of the

complainant that he had issued a notice to the accused by R.P.A.D. he did not produce any Postal receipt to show that the notice was really sent to the accused. The complainant had produced one document pertaining to be acknowledgment about receipt of the notice but neither that acknowledgment was signed by the accused nor there was any seal of the Post office to show that it is in fact, the acknowledgment of the notice served on the accused. The learned trial Court noted that the complainant had produced only a copy of the notice, which was allegedly issued to the accused but mere production of such copy does not prove that either notice was issued or served on the accused.

3. The learned counsel for the applicant has shown the original Postal receipt and contended that the receipt was in possession of the complainant but it was not produced. If it is so, then it is impossible to find any fault with the

impugned order of acquittal. From these facts and circumstances it appears that the complainant had not produced the necessary evidence before the trial Court to prove that the notice was issued to the respondent. Therefore, I find no fault in the order of acquittal.

4. Leave to prefer the appeal refused. The application stands rejected.

(J.H.BHATIA, J.)